

UNITED STATES OF AMERICA :
 : CRIMINAL NO. 03-691
 v. :
 : (C.A. NO. 05-1395)
 EDWARD MARTIN :

Fullam, Sr. J. June 23, 2005

For a host of reasons, the motion lacks merit. Mr. Martin was sentenced on June 8, 2004, pursuant to a guilty plea. As part of the plea agreement, Mr. Martin waived his right to appeal or collaterally attack his sentence. Even if that waiver is not enforced (and, under the circumstances of this case, the waiver is indeed enforceable), the fact remains that Mr. Martin's time for filing a direct appeal had expired on June 18, 2004. The Blakely decision was not rendered until June 24, 2004. It was not until the decision in United States v. Booker, 125 S. Ct. 738 (2005) in January 2005 that federal guideline sentences were

affected by the earlier Blakely decision. Moreover, it is now clear that Blakely does not apply retroactively to sentences imposed before that decision was rendered. See, e.g., Lloyd v. United States, 407 F.3d 608 (3d Cir. 2005). There is thus absolutely no merit in the contention that Mr. Martin's trial attorney should have appealed on Blakely grounds in June 2004.

Finally, the Blakely and Booker decisions would not have aided Mr. Martin in any event. They merely preclude sentencing judges from enhancing sentences on the basis of facts which have not been either found by a jury or admitted by the defendant. In this case, the defendant admitted, under oath and in open court, all of the facts which increased the guideline range.

For all of these reasons, the defendant's motion for relief under 28 U.S.C. § 2255 will be denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL NO. 03-691
v.	:	
	:	(C.A. NO. 05-1395)
EDWARD MARTIN	:	

ORDER

AND NOW, this 23rd day of June 2005, IT IS ORDERED:

That the defendant, Edward Martin's, motion for habeas corpus relief under 28 U.S.C. § 2255 is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.